

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

EQUAL EMPLOYMENT OPPORTUNITY

MANAGEMENT DIRECTIVE 715

EEO MD-715

EFFECTIVE DATE: October 1, 2003

TO THE HEADS OF FEDERAL AGENCIES:

1. **SUBJECT.** Federal responsibilities under Section 717 of Title VII and Section 501 of the Rehabilitation Act.
2. **PURPOSE.** This Directive provides policy guidance and standards for establishing and maintaining effective affirmative programs of equal employment opportunity under Section 717 of Title VII (PART A) and effective affirmative action programs under Section 501 of the Rehabilitation Act (PART B). The Directive also sets forth general reporting requirements (PART C). Additional guidance and instructions for implementing the policies set forth herein will be issued separately.
3. **ORIGINATOR.** Equal Employment Opportunity Commission, Office of Federal Operations.
4. **SUPERSESSION.** This Directive SUPERSEDES EEO Management Directives 712 (dated March 29, 1983), and 713 and 714 (both dated October 6, 1987), and all related interpretative memoranda.
5. **AUTHORITY.** This Management Directive is prepared pursuant to EEOC's authority under Section 717 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16; Reorganization Plan No. 1 of 1978, issued pursuant to 5

U.S.C. § 901 et seq.; Executive Order 11748; and Section 501 of the Rehabilitation Act of 1973, as amended by Pub. L. 99-506, 100 Stat. 1807, October 21, 1986.

6. APPLICABILITY AND SCOPE. This Directive applies to all executive agencies and military departments (except uniformed members) as defined in Sections 102 and 105 of Title 5 U.S.C. (including those with employees and applicants for employment who are paid from nonappropriated funds), the United States Postal Service, the Postal Rate Commission, the Tennessee Valley Authority, the Smithsonian Institution, and those units of the judicial branch of the federal government having positions in the competitive service.

7. POLICY INTENT. The overriding objective of this Directive is to ensure that all employees and applicants for employment enjoy equality of opportunity in the federal workplace regardless of race, sex, national origin, color, religion, disability or reprisal for engaging in prior protected activity.

8. RESPONSIBILITIES.

- a. Agency Heads are responsible for the following:
 - 1. Ensuring compliance with this Directive and those implementing instructions issued by EEOC in accordance with existing law and authority.
 - 2. Developing systems for the evaluation of program effectiveness and barrier identification and elimination; ensuring that the agency has adequate data systems for effective analyses of applicant flow, on-board workforce and personnel transactions data; providing current guidance for the development of program plans to all component and field installations; establishing agency-wide objectives and developing and submitting program plans; and preparing accomplishment reports and plan updates for timely submission to EEOC.
 - 3. Ensuring the accuracy of all data submitted to the Office of Personnel Management's Central Personnel Data File (CPDF), as well as all data submitted to EEOC under this Directive.
 - 4. Demonstrating commitment to equality of opportunity for all employees and applicants for employment that is communicated through the ranks from the top down.
- b. EEOC is responsible for the following:
 - 1. Reviewing and evaluating the operation of all agency equal employment opportunity programs.

2. Reviewing and approving agency EEO plans and reports and communicating the results of evaluations to each agency, and directing agencies, as appropriate, to develop additional program objectives.
3. Providing technical assistance and training to agencies.
4. Submitting an annual report on the federal workforce based upon agency reports submitted during the fiscal year, data from the Central Personnel Data File, onsite program reviews and other audits to the President, Congress and appropriate Congressional committees.

9. DEFINITIONS. Definitions that apply to this Directive are located in Appendix A.

10. POLICIES AND PROCEDURES. This Directive provides policy guidance and standards for establishing and maintaining effective affirmative programs of equal employment opportunity under Section 717 of Title VII (PART A) and effective affirmative action programs under Section 501 of the Rehabilitation Act (PART B). The Directive also sets forth general reporting requirements (PART C). EEOC will separately issue additional guidance and instructions for implementing the policies set forth herein. In addition, EEOC will provide technical assistance and training necessary to assist agencies in the accomplishment of these objectives.

11. REPORTING REQUIREMENTS. The reporting requirements under this Directive are set out in Part C.

12. LIST OF APPENDICES.

| Appendix | Title |
|----------|--|
| A | Definitions |
| B | Authorities Relevant to Federal EEO Responsibilities |

13. INQUIRIES.

Further information concerning this Directive may be obtained by contacting:

Director, Federal Sector Programs
Office of Federal Operations
Equal Employment Opportunity Commission
1801 L Street NW
Washington, D.C. 20507
Telephone: (202) 663-4599

Model Agency Title VII and Rehabilitation Act Programs

I. Introduction

The United States government employs over two million men and women across the country and around the world. The ability of our government to meet the complex needs of our nation and the American people rests squarely on these dedicated and hard-working individuals. Perhaps now more than ever before – with increasing public expectations of governmental institutions – federal agencies must position themselves to attract, develop and retain a top-quality workforce that can deliver results and ensure our nation's continued growth and prosperity.

Equal opportunity in the federal workplace is key to accomplishing this goal. In order to develop a competitive, highly qualified workforce, federal agencies must fully utilize all workers' talents, without regard to race, color, religion, national origin, sex or disability. While the promise of workplace equality is a legal right afforded all of our nation's workers, equal opportunity is more than a matter of social justice. It is a national economic imperative. Federal agencies must make full use of our nation's human capital by promoting workplace practices that free up opportunities for the best and brightest talent available. All workers must compete on a fair and level playing field and have the opportunity to achieve their fullest potential.

Policies and practices that impede fair and open competition in the federal workplace cost the American economy millions of dollars each year. The most obvious costs are out-of-pocket costs borne by both agencies and federal workers in connection with workplace disputes. Perhaps less obvious – but just

as expensive – are costs associated with decreased morale and productivity and the ineffective and inefficient use of human capital resources. These costs can – and should – be avoided. Agencies must make a firm commitment to the principles of equal opportunity and make those principles a fundamental part of agency culture.

Title VII of the Civil Rights Act of 1964 (Title VII) and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act) mandate that all federal personnel decisions be made free of discrimination on the basis of race, color, religion, sex, national origin, reprisal or disability¹ and also require that agencies establish a program of equal employment opportunity for all federal employees and job applicants. 42 U.S.C. §2000e-16 and 29 U.S.C. §791. The Equal Employment Opportunity Commission (EEOC) has adjudicatory responsibilities in the federal EEO complaints process and oversight responsibility for federal programs required by Section 717 of Title VII and Section 501 of the Rehabilitation Act generally.

This Directive, which reflects recent and significant changes in the law, including recent Supreme Court decisions, supersedes earlier EEOC Management Directives and related interpretative memoranda on this subject and provides new guidance on the elements of legally compliant Title VII and Rehabilitation Act programs. This Directive requires agencies to take appropriate steps to ensure that all employment decisions are free from discrimination. It also sets forth the standards by which EEOC will review the sufficiency of agency Title VII and Rehabilitation Act programs, which include periodic agency self-assessments and the removal of barriers to free and open workplace competition.

Additional information concerning federal sector equal employment opportunity law and programs can be found at EEOC's website at www.eeoc.gov. The EEOC will also supplement this Directive on an as-needed basis through the issuance of additional guidance and technical assistance. Questions concerning this Directive should be directed to EEOC's Office of Federal Operations.

II. Essential Elements of Model Agency Title VII and Rehabilitation Act Programs

The essential elements of model Title VII and Rehabilitation Act programs are:

- Demonstrated commitment from agency leadership;
- Integration of EEO into the agency's strategic mission;
- Management and program accountability;
- Proactive prevention of unlawful discrimination;
- Efficiency; and
- Responsiveness and legal compliance.

A. Demonstrated Commitment From Agency Leadership

- This Directive requires agency heads and other senior management officials to demonstrate a firm commitment to equality of opportunity for all employees and applicants for employment. Even the best workplace policies and procedures will fail if they are not trusted, respected and vigorously enforced. Agencies must translate equal opportunity into every day practice and make those principles a fundamental part of agency culture. This commitment to equal opportunity must be embraced by agency leadership and communicated through the ranks from the top down. It is the responsibility of each agency head to take such measures as may be necessary to incorporate the principles of equal employment opportunity into the agency's organizational structure.
- To this end, agency heads must issue a written policy statement expressing their commitment to equal employment opportunity (EEO) and a workplace free of discriminatory harassment. This statement should be issued at the beginning of their tenure and thereafter on an annual basis and disseminated to all employees. In addition, agency heads and other senior management officials may, at their discretion, issue similar statements when important issues relating to equal employment opportunity arise within their agency or when important developments in the law occur.

B. Integration of EEO Into The Agency's Strategic Mission

Equality of opportunity is essential to attracting, developing and retaining the most qualified workforce to support the agency's achievement of its strategic mission. To this end, and in addition to the regulatory requirements found at 29 C.F.R. § 1614.102(b)(4), as interpreted in Management Directive 110 at 1-1, agencies must:

- Maintain a reporting structure that provides the agency's EEO Director with regular access to the agency head and other senior management officials for reporting on the effectiveness, efficiency and legal compliance of the agency's Title VII and Rehabilitation Act programs. To emphasize the importance of the position, the agency head should be involved in the selection and performance review of the EEO Director.
- Ensure EEO professionals are involved with, and consulted on, the management and deployment of human resources. The EEO Director should be a regular participant in senior staff meetings and regularly consulted on human resources issues.
- Allocate sufficient resources to create and/or maintain Title VII and Rehabilitation Act programs that: 1) identify and eliminate barriers that impair the ability of individuals to compete in the workplace because of race, national origin, sex or disability; 2) establish and maintain training and education programs designed to provide maximum opportunity for all employees to advance; and 3) ensure that unlawful discrimination in the workplace is promptly corrected and addressed.
- Attract, develop and retain EEO staff with the strategic competencies necessary to accomplish the agency's EEO mission, and interface with agency officials, managers and employees.
- Recruit, hire, develop and retain supervisors and managers who have effective managerial, communications and interpersonal skills. Provide managers and supervisors with appropriate training and other resources to understand and successfully discharge their duties and responsibilities.
- Involve managers and employees in the implementation of the agency's Title VII and Rehabilitation Act programs.
- Use various media to distribute EEO information concerning federal EEO laws, regulations and requirements, rights, duties and responsibilities and to promote best workplace practices.

C. Management and Program Accountability

A model Title VII and Rehabilitation Act program will hold managers, supervisors, EEO officials and personnel officers accountable for the effective implementation and management of the agency's program. In ensuring such accountability, the agency must:

- Conduct regular internal audits, on at least an annual basis, to assess the effectiveness and efficiency of the Title VII and Rehabilitation Act programs and to ascertain whether the agency has made a good faith effort to identify and remove barriers to equality of opportunity in the workplace.

- Establish procedures to prevent all forms of discrimination, including harassment, retaliation and failure to provide reasonable accommodation to qualified individuals with disabilities.
- Evaluate managers and supervisors on efforts to ensure equality of opportunity for all employees.
- Maintain clearly defined, well-communicated, consistently applied and fairly implemented personnel policies, selection and promotion procedures, evaluation procedures, rules of conduct and training systems.
- Implement effective reasonable accommodation procedures that comply with applicable executive orders, EEOC guidance, the Architectural and Transportation Barriers Compliance Board's Uniform Federal Accessibility Standards and Electronic and Information Technology Accessibility Standards. Ensure that EEOC has reviewed those procedures when initially developed and if procedures are later significantly modified.
- Be mindful of the agency's disability program obligations, including the provision of reasonable accommodations, when negotiating collective bargaining agreements with recognized labor organization(s) representing agency employees.
- Ensure effective coordination between the agency's EEO programs and related human resource programs, including the Federal Equal Opportunity Recruitment Program (FEORP), the Selective Placement Programs and the Disabled Veterans Affirmative Action Program (DVAAP).
- Review each finding of discrimination to determine the appropriateness of taking disciplinary action against agency officials involved in the matter. Track these decisions and report trends, issues and problems to agency leadership for appropriate action.
- Ensure compliance with settlement agreements and orders issued by the agency, EEOC, and EEO-related cases from the Merit Systems Protection Board, labor arbitrators, and the Federal Labor Relations Authority.

D. Proactive Prevention of Unlawful Discrimination

- Agencies have an ongoing obligation to prevent discrimination on the bases of race, color, national origin, religion, sex, age, reprisal and disability, and eliminate barriers that impede free and open competition in the workplace. As part of this on-going obligation, agencies must conduct a self-assessment on at least an annual basis to monitor progress, identify areas where barriers may operate to exclude certain groups and develop strategic plans to eliminate identified barriers. A more detailed explanation of this process follows at Part A (Title VII) and Part B (Rehabilitation Act) of this Directive.

E. Efficiency

- Agencies must have an efficient and fair dispute resolution process and effective systems for evaluating the impact and effectiveness of their EEO programs.
- Maintain an efficient, fair and impartial complaint resolution process. Agencies should benchmark against EEOC regulations at 29 C.F.R. Part

1614 and other federal agencies of similar size highly ranked in EEOC's Annual Report on the federal sector complaints process.

- Ensure that the investigation and adjudication function of the agency's complaint resolution process are kept separate from the legal defense arm of the agency or other agency offices with conflicting or competing interests.
- Establish and encourage the widespread use of a fair alternative dispute resolution (ADR) program that facilitates the early, effective and efficient informal resolution of disputes. Appoint a senior official as the dispute resolution specialist of the agency charged with implementing a program to provide significant opportunities for ADR for the full range of employment-related disputes. Whenever ADR is offered in a particular workplace matter, ensure that managers at all appropriate levels will participate in the ADR process.
- Use a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed at each stage of the agency's complaint resolution process, the issues and the bases of the complaints, the aggrieved individuals/complainants, the involved management officials and other information necessary to analyze complaint activity and identify trends.
- Identify, monitor and report significant trends reflected in complaint processing activity. Analysis of data relating to the nature and disposition of EEO complaints can provide useful insight into the extent to which an agency is meeting its obligations under Title VII and the Rehabilitation Act.
- Ensure timely and complete compliance with EEOC orders and the provisions of settlement/resolution agreements.
- Maintain a system that collects and maintains accurate information on the race, national origin, sex and disability status of agency employees. See 29 C.F.R. § 1614.601 for further guidance.
- Maintain a system that tracks applicant flow data, which identifies applicants by race, national origin, sex and disability status and the disposition of all applications. EEOC will issue more detailed guidance on collecting and maintaining applicant flow data.
- Maintain a tracking system of recruitment activities to permit analyses of these efforts in any examination of potential barriers to equality of opportunity.
- Identify and disseminate best workplace practices.

F. Responsiveness and Legal Compliance

Federal agencies must:

- Ensure that they are in full compliance with the law, including EEOC regulations, orders and other written instructions. See 42 U.S.C. § 2000e-16(b).

- Report agency program efforts and accomplishments to EEOC and respond to EEOC directives and orders in accordance with EEOC instructions and time frames.
- Ensure that management fully and timely complies with final EEOC orders for corrective action and relief in EEO matters.

PART A

SECTION 717 OF TITLE VII

Proactive Prevention of Unlawful Discrimination

I. Introduction

The United States government must ensure that all its personnel actions are "made free" of any discrimination based on race, color, religion, sex, national origin or reprisal and that each of its agencies has "an affirmative program of equal employment opportunity" for all employees and applicants for employment. Section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16. The Equal Employment Opportunity Commission (EEOC) is responsible for the review and evaluation of all federal sector equal employment opportunity (EEO) efforts.

Thus, Section 717 of Title VII requires federal agencies to take proactive steps to ensure equal employment opportunity for all their employees and applicants for employment. This means that agencies must work to proactively prevent potential discrimination before it occurs and establish systems to monitor compliance with Title VII. Agencies must regularly evaluate their employment practices to identify barriers to equality of opportunity for all individuals. Where such barriers are identified, agencies must take measures to eliminate them. With these steps, agencies will ensure that all persons are provided opportunities to participate in the full range of employment opportunities and achieve to their fullest potential.

II. Agency Self-Assessment

Agencies have an ongoing obligation to eliminate barriers that impede free and open competition in the workplace and prevent individuals of any racial or national origin group or either sex from realizing their full potential. As part of this on-going obligation, agencies must conduct a self-assessment on at least an annual basis to monitor progress and identify areas where barriers may operate to exclude certain groups. A first step in conducting this self-assessment involves looking at the racial, national origin and gender profile of relevant occupational categories in an agency's workforce. Guidance on how to group occupational categories will be provided separately. This "snapshot" can serve as a diagnostic tool to help agencies determine possible areas where barriers may exist and may require closer attention.

Agencies should be mindful, however, that statistics are only a starting point and alone rarely serve to provide a complete picture of the existence of workplace barriers. Agencies must look at statistics in the context of the totality of the circumstances. A statistical snapshot may be useful as an initial diagnostic tool, but conclusions concerning the existence of workplace barriers cannot be drawn from gross numerical assessments. Rather, the identification of workplace barriers will require a thorough examination of all of the circumstances.

The initial snapshot conducted by the agency must include, but not necessarily be limited to, an evaluation of the following data relating to the agency's status as of the end of each fiscal year:

- Total workforce distribution by race, national origin and sex for both the permanent and temporary² workforce;
- Permanent and temporary workforce participation rates for each grade level by race, national origin and sex;
- Permanent and temporary workforce participation rates for each of the agency's major occupational categories (divided by grade level) by race, national origin and sex;
- Participation rates in supervisory and management positions by race, national origin and sex;
- The race, national origin and sex of applicants for both permanent and temporary employment;

- The rates of selections for promotions, training opportunities and performance incentives by race, national origin and sex; and
- The rates of both voluntary and involuntary separations from employment by race, national origin and sex.

This type of information should help an agency identify any meaningful disparities and further focus its self-assessment.

In conducting its self-assessment, agencies shall compare their internal participation rates with corresponding participation rates in the relevant civilian labor force (CLF). Geographic areas of recruitment and hiring are integral factors in determining "relevant" civilian labor force participation rates. EEOC will provide appropriate civilian labor force data for use by agencies. With respect to positions typically filled through the internal promotion process or through transfers from other federal agencies, a self-assessment will involve looking at the racial, national origin and gender profile of the occupational categories and/or grade levels from which such promotions or transfers are typically made. EEOC will, from time to time, provide additional guidance on conducting the analysis.

This Directive requires agencies to collect and maintain race, national origin and gender data on employees in their permanent and temporary workforce. Such data is also required to be collected and maintained for applicants for employment. Agencies should obtain identifying information from employees and applicants by requesting voluntary self-identification. See 29 C.F.R. 1614.601. Separate guidance, including updated information on racial and national origin groupings, will be issued from EEOC concerning the collection of this data.

III. Barriers to Equal Employment Opportunity

Where an agency's self-assessment indicates that a racial, national origin or gender group may have been denied equal access to employment opportunities, the agency must take steps to identify the potential barrier. Workplace barriers can take various forms and sometimes involve a policy or practice that is neutral on its face. Identifying and evaluating potential barriers requires an agency to examine all relevant policies, practices, procedures and conditions in the

workplace. The process further requires each agency to eliminate or modify, where appropriate, any policy, practice or procedure that creates a barrier to equality of opportunity.

For example, if a self-assessment revealed that Hispanics are virtually absent from the workforce in a facility, it would be logical for the agency to initially focus attention on its hiring and recruitment activities. The agency could rule out potential recruitment concerns if it determined that Hispanics were well represented among its applicants for employment. It would then be appropriate for the agency to examine all other aspects of the hiring process to identify the factor(s) responsible for the statistical disparity.

It is crucial for agencies to ensure that their barrier analyses are focused, methodical and involve the participation of all relevant agency officials.

Depending on the nature of the potential problem an agency might consider the following questions:

- Are recruitment efforts resulting in a cross-section of qualified applicants? Is there a significant disparity between the proportion of a racial, national origin or gender group in the agency's applicant pools and the proportion of that group in the relevant labor markets from which applicants are drawn?
- In a workforce where employees of a particular group are virtually absent, to what extent are employment opportunities unnecessarily restricted to internal applicants?
- Have supervisors, managers and executives been adequately trained on the agency's obligations under Title VII?
- Are there decision makers whose employment decisions have excluded individuals on the basis of race, national origin or sex?
- Are there any selection criteria that tend to screen out a particular racial, national origin or gender group?

IV. Barrier Evaluation and Elimination

Once an agency identifies a likely factor (or combination of factors) adversely affecting the employment opportunities of a racial, national origin or gender group, it must decide how to respond. For example, statistical disparities are identified in an agency's auditor occupational group and further examination of the situation reveals the following: In the past, the auditor occupational group

was racially diverse, including at the higher grade levels. However, after the agency instituted a requirement that auditors must be certified public accountants (CPAs) in order to be promoted to the GS-14 level or higher, few internal candidates held CPAs and therefore did not qualify for promotional opportunities to the higher level grades. As a result, the agency recruited candidates for these positions from a local business school with a student population that primarily came from the same racial group. Over time, auditors at the grade 14 level and above did not reflect the racial diversity of auditors at the lower grade levels. Assuming the requirement for a CPA is justified by business necessity, the agency has several options to consider in designing a response to this situation. Most obviously, the agency should increase its applicant pool for positions at the grade 14 and above by recruiting at other business schools with more diverse student populations. As an additional option, the agency might take steps to encourage its own auditors at the lower grade levels to pursue a CPA. Each agency must assess the appropriateness of any policy, practice, procedure or condition determined to negatively correlate with race, national origin or sex. In making its assessment, the agency should consider, as appropriate, the following:

- whether the agency head can do more to demonstrate to the workforce, his or her commitment to equal employment opportunity;
- whether there are budgetary or other restrictions governing a decision to limit recruitment to internal applicants;
- whether certain qualification standards are truly necessary to the successful performance in a position; and
- whether selection criteria used to assess qualifications that have been found to exclude or adversely impact a particular racial, national origin or gender group truly measure the knowledge, skills and abilities that they purport to measure, and whether alternative criteria are available that do not disadvantage any particular group.

Where it is determined that an identified barrier serves no legitimate purpose with respect to the operation of an agency, this Directive requires that agencies take immediate steps to eliminate the barrier. Even where a policy or practice that poses a barrier can be justified on grounds of business necessity, agencies must

investigate whether less exclusionary policies or practices can be used that serve the same business purpose. Identified barriers that are not within the control or authority of the agency to change should be brought to the attention of the responsible entity and EEOC.

In addition to identifying and eliminating barriers, agencies may consider measures to enhance and maximize opportunities for all employees, such as:

- Identifying career enhancing opportunities such as details, developmental assignments, mentoring programs, etc. Structuring details or developmental assignments to expose a broad range of employees to a variety of positions within the agency.
- Assessing internal availability of candidates by identifying job-related skills, education, knowledge and abilities that may be obtained at lower levels in the same or similar occupational series.
- Conducting a skills-building inventory of agency employees, including but not limited to, current and potential gaps in skills and the distribution of skills. Developing an action plan to address these gaps.
- When appropriate, developing broad criteria for evaluating the knowledge, skills and abilities of applicants for particular positions that takes into account a range of experience and skills.

PART B

SECTION 501 OF THE REHABILITATION ACT

Proactive Prevention of Unlawful Discrimination

I. Introduction

Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791, requires federal agencies to take proactive steps to provide equal opportunity to qualified individuals with disabilities in all aspects of federal employment.

Congress has directed the federal government serve as a model employer of

people with disabilities. Toward that end, each agency must develop and maintain "an affirmative action program plan for the hiring, placement, and advancement of individuals with disabilities" that, among other things, provides adequate employment opportunities and sets out the ways in which an agency will meet the needs of its employees with disabilities.

The mandate to serve as a model employer requires several things. First, agencies may not discriminate against qualified individuals with disabilities. But non-discrimination alone is not enough. The Rehabilitation Act also requires agencies to take proactive steps to ensure equal employment opportunity for individuals with disabilities. This means agencies must attempt to prevent discrimination before it occurs and must establish systems to monitor their own compliance with the Act. Agencies must regularly evaluate their employment practices to identify barriers to equality of opportunity for individuals with disabilities. Where such barriers are identified, agencies must eliminate them. With these steps, agencies will ensure that individuals with disabilities are provided opportunities to fully participate in employment opportunities and achieve to their fullest potential.

II. Non-Discrimination

The Rehabilitation Act requires agencies to ensure that employment decisions are free of unlawful discrimination on the basis of disability. In 1992, Congress amended the Rehabilitation Act to incorporate the non-discrimination standards of the Americans with Disabilities Act (ADA). Under the ADA, the term "discriminate"³ generally includes:

- making unlawful medical examinations or inquiries;
- not providing reasonable accommodations to an otherwise qualified individual with a disability unless the agency can demonstrate that the accommodation would impose an undue hardship on its operations;
- denying job opportunities to an otherwise qualified applicant or employee because of the need for a reasonable accommodation;

- using qualification standards, employment tests or other selection criteria that screen out, or tend to screen out, individuals with disabilities unless shown to be job-related for the position in question and consistent with business necessity;
- failing to select and administer employment tests in the most effective manner to ensure that when the test is administered, the test results accurately reflect the skills, aptitudes or other factors the test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant⁴;
- using standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control;
- limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;
- participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to prohibited discrimination; and
- excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

The Rehabilitation Act also prohibits retaliation against an individual because such individual has opposed any act or practice made unlawful by the Act or because such individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under the Act.

III. Agency Self-Analysis

Each agency is required to conduct an internal review and analysis of the effects of all current and proposed policies, practices, procedures and conditions that, directly or indirectly, relate to the employment of individuals with disabilities. For purposes of this requirement, the term "employment" refers to the full range of employment decisions, including (but not limited to) hiring, advancement, retention, and other general terms, conditions and privileges of employment. The term "conditions" is intended to refer to the full range of environmental circumstances within an agency, including the physical layout and design of the structure in which the agency is located. In this regard, agencies should be mindful of their obligation to ensure that their physical structures and facilities

comply with the requirements of the Architectural Barriers Act (42 U.S.C. § 4151 et seq) and relevant titles of the ADA.

The self-assessment required by this Directive is an ongoing obligation that must be undertaken on at least an annual basis. Each agency must collect⁵ and evaluate information and data necessary to make an informed assessment about the extent to which the agency is meeting its responsibility to provide employment opportunities for qualified applicants and employees with disabilities, especially those with targeted disabilities.

A snapshot of the numerical representation and distribution of applicants and employees with disabilities can alert an agency to possible barriers that may impede employment opportunities for this group. However, agencies must be mindful that, while such numerical analyses can be useful as initial diagnostic and measuring tools, not all issues relating to their obligations under the Rehabilitation Act will lend themselves to such an analysis. Moreover, an agency can be liable for discrimination under the Rehabilitation Act if its practices exclude even one individual on the basis of that individual's disability. It is the responsibility of each agency to be sensitive to any employment circumstance or condition that may be relevant to its ability to meet its fundamental obligation to effect appropriate hiring, advancement and retention of individuals with disabilities, especially those with targeted disabilities.

The self assessment must encompass the full spectrum of employment within the agency and must include, but not be limited to, an evaluation of the following with respect to the agency's status at the end of each fiscal year:

- Total workforce distribution of employees with disabilities⁶ for both the permanent and temporary workforce;
- Representation and distribution of employees with disabilities, by grade, in both the permanent and temporary workforce;
- Permanent and temporary workforce participation of employees with disabilities in major occupational groups by grades;
- The representation of individuals with disabilities among applicants for permanent and temporary employment;
- The representation of employees with disabilities among those who received promotions, training opportunities and performance incentives;

- The representation of employees with disabilities among those who were voluntarily and involuntarily separated;
- The effectiveness and efficiency with which the agency processes requests for reasonable accommodation under the Rehabilitation Act;
- The extent to which an agency is in compliance with Section 508 of the Rehabilitation Act's requirement to provide employees with disabilities access to information and data that is comparable to that provided to those without disabilities; and
- Information and trend data reflecting the nature, status and disposition of complaints in the administrative process (EEOC, MSPB and FLRA) and in court alleging violations of the Rehabilitation Act.

Although the census provides data reflecting the general and specific workforce participation rates of racial, national origin and gender groups, there is no comparable data currently available for individuals with disabilities. It is therefore difficult to perform a reliable statistical analysis, based on general workforce data, to determine the expected rate at which individuals with disabilities should be hired absent discrimination.

However, a review of agency annual submissions to the EEOC reveals that some agencies favorably distinguish themselves (compared to the federal government in general) through the number of employees with disabilities in their workforce. Until such time as reliable data is developed and disseminated concerning the general availability of individuals with disabilities in the workforce, this Directive recommends agencies evaluate themselves against the workforce profile of the federal government in general and that of agencies ranked highly, in this respect, in the most recent EEOC annual report on the federal workforce. All agencies, regardless of their relative standing, are strongly encouraged to effect steady and measurable progress with respect to the employment and advancement of individuals with disabilities.

In addition to the absence of reliable availability data for individuals with disabilities, any statistical analysis is complicated by the fact that disabilities are individual in nature, making gross statistical comparisons of limited value.

Notwithstanding these limitations, an agency's analysis of the above information can help facilitate an assessment concerning the extent to which individuals with disabilities, especially those with targeted disabilities, are provided equal

employment opportunities. Statistical information may be a useful starting point for a more thorough examination of the agency's physical facilities, electronic and information processes, personnel policies, selection and promotion procedures, evaluation procedures, rules of conduct and training systems to ensure full accessibility for individuals with disabilities.

Collecting and Maintaining Information About Disability

Meeting the standards of the self-analysis under the Rehabilitation Act necessarily requires an agency to obtain and maintain information regarding whether applicants and employees have disabilities. Such disability-related information is considered to be "medical information," the collection and maintenance of which is restricted by law. Agencies must adopt procedures to ensure that all disability-related "medical" information is collected and managed in accordance with the law's requirements.

Collecting Disability-Related Information

The Rehabilitation Act restricts how agencies may collect disability-related "medical" information⁷. Individuals with disabilities may be identified in one of the following ways:

- Agencies may use information obtained from Standard Form 256, the "Self-Identification of Handicap" form (SF 256) issued by the Office of Personnel Management, or other information that individuals choose to disclose about the existence of disabilities. See 29 C.F.R. § 1614.601(f).
- Agencies tracking applications from individuals with disabilities, or considering the use of excepted appointing authorities or other special programs, may invite applicants to indicate if they have the types of disabilities that are covered by the program at issue.

Whenever an agency invites an applicant or employee to provide information about his/her disability, the agency must clearly notify such individual that: (a) response to the invitation is voluntary and refusal to provide the information will not subject the individual to any adverse treatment; (b) the information will be

kept confidential and used only for affirmative action purposes; and (c) individuals may self-identify at any time during their employment and failure to complete SF 256 or to respond to pre-offer invitations will not excuse the agency from Rehabilitation Act requirements.

Confidentiality of Disability-Related Information

All medical or disability-related information must be kept confidential in accordance with EEOC regulations. Under these regulations, such information must be collected and maintained on separate forms, kept in separate files and treated as confidential medical records. 29 C.F.R. § 1630.14(b)(1).

For affirmative action purposes alone, medical and disability-related information may be disclosed to managers and others involved in a selection process, as well as to those responsible for affirmative action, where the information indicates that an applicant may be included under excepted appointing authorities or eligible to receive other affirmative action benefits. Moreover, disability-related information may be used to manage, evaluate, and report on EEO and affirmative action programs; data from SF 256 may, for example, be provided to those who will generate the statistics necessary for the workforce analyses required by this Directive.

All persons to whom information is disclosed for Rehabilitation Act program purposes must be informed about the restrictions placed on use of the information and instructed not to disclose it further than necessary to satisfy those purposes.

IV. Barriers to Equal Employment Opportunity

Where an agency's self-assessment indicates that qualified individuals with disabilities may have been, or may currently be, denied equal access to employment opportunities, the agency must take steps to identify the potential barrier. Workplace barriers can take various forms and sometimes involves a policy or practice that is neutral on its face. Identifying and evaluating potential

barriers requires an agency to methodically examine the full range of policies, practices, procedures and conditions in the workplace. The process requires each agency to eliminate or modify, where appropriate, any factor that negatively correlates with disability.

Investigating potential barriers requires an agency to identify all policies, practices, procedures and conditions that may be relevant to the potential concern identified by the self-assessment. It is crucial for agencies to ensure that their investigations are focused and methodical. Such investigations should involve the participation of all relevant agency officials. Depending on the nature of the potential problem identified, an agency might consider the following questions:

- Are the agency's recruitment efforts resulting in sufficient numbers of applicants with disabilities, especially targeted disabilities?
- Are there opportunities to re-survey the agency's workforce at least every other year to maintain accurate and updated statistics on employees with disabilities?
- Is the physical structure and layout of the agency facility in compliance with applicable accessibility standards?
- Even if the agency is in compliance with accessibility standards, are there other physical barriers that remain?
- Is there evidence in the workplace of actions or practices reflecting myths, fears and stereotyping regarding individuals with disabilities?
- In a workforce where employees with disabilities are virtually absent, to what extent are employment opportunities restricted to internal applicants? Could hiring be expanded to include external candidates?
- Has the agency adequately trained its supervisors, managers and executives on the requirements of the Rehabilitation Act, including the duty to provide reasonable accommodations to otherwise qualified individuals with disabilities?
- Does the agency have an adequately funded and effective procedure for providing reasonable accommodations to employees with disabilities?
- Are there particular decision makers or groups of decision makers whose employment decisions consistently exclude qualified individuals on the basis of disability?
- Do selection criteria tend to exclude individuals with disabilities, in general, or to exclude a person with particular types of disabilities? If so, are these standards necessary to the successful performance of a particular job? Does the selection criteria at issue truly measure the knowledge, skills and abilities it purports to measure and are there alternative criteria that would serve the same purpose?

V. Barrier Evaluation and Elimination

Once an agency identifies a barrier to equal opportunities for individuals with disabilities, it must decide how to respond. Each agency must assess the appropriateness of any policy, practice, procedure or condition determined to negatively correlate with disability.

Where it is determined that a barrier to equal employment opportunity is not job-related and consistent with business necessity, this Directive requires that the agency immediately take steps to eliminate the barrier. Even where a policy or practice can be justified on grounds of business necessity, agencies must investigate whether less exclusionary policies or practices can be used that serve the same business purpose, including the provision of reasonable accommodation. Identified barriers that are not within the control or authority of the agency to change should be brought to the attention of the responsible entity and EEOC. Any barrier associated with myths, fears or stereotyping must be eliminated immediately.

Where, as a result of its self-assessment, an agency determines that merely eliminating a barrier would not adequately address the harm caused by the barrier, it must then consider other neutral alternatives to remedy the lingering effects of the problem.

In eliminating barriers, agencies should pay special attention to ensuring their reasonable accommodation procedures are effective and in compliance with applicable executive orders and EEOC guidance.

Establishing Written Procedures For Reasonable Accommodation Requests

Agencies are required to establish and publicize specific written procedures for the prompt and efficient resolution of requests for reasonable accommodation.^{[8](#)} Such procedures should address the scope of the agency's obligation to provide reasonable accommodation and the types of accommodations that must be considered. In addition, the procedures should address at least the following:

- the personnel whom employees, selectees or applicants should initially contact to request a reasonable accommodation;

- the personnel forms, if any, that an individual may be asked to complete in connection with a request for an accommodation;
- the circumstances in which supervisors or others should initiate inquiries about the need for accommodation;
- the personnel and/or offices that must approve an accommodation request;
- the amount of time decision makers have to answer requests for accommodation;
- an explanation of when decision makers may request documentation of the existence of a disability or the need for an accommodation;
- the resources, including technical assistance, available to decision makers to gain information about possible accommodations for particular disabilities;
- the ways in which accommodations can be funded or effected;
- the documentation, if any, that must be maintained concerning the consideration and disposition of requests for accommodation; and
- the process, if any, that individuals may follow to appeal denials of requests for accommodation or for specific accommodations.

In drafting procedures, agencies should ensure that requests for accommodations are handled expeditiously by knowledgeable personnel.

Procedures should maximize the agency's ability to provide reasonable accommodation to all individuals who require accommodation. For example, agencies might consider establishing a central pool of staffing slots to provide readers, interpreters and personal assistants to individuals with disabilities throughout the agency or agency component.

VI. Setting Goals

The steps described above -- conducting work force analyses, reviewing agency policies, practices and facilities, and fulfilling obligations to people with disabilities under the Rehabilitation Act -- should enable an agency to make substantial progress in promoting the employment of qualified individuals with disabilities. However, such efforts may well be insufficient to provide the adequate employment opportunities that are required by the Rehabilitation Act for individuals with disabilities. Indeed, Congress anticipated that the federal government, as a model employer of individuals with disabilities, would take additional steps to include individuals with disabilities at all levels of the federal workforce.

This Directive requires agencies with 1,000 employees or more to maintain a special recruitment program for individuals with targeted disabilities and to establish specific goals for the employment and advancement of such individuals.⁹ For these purposes, targeted disabilities may be considered as a group. Agency goals should be set and accomplished in such a manner as will effect measurable progress from the preceding fiscal year.

To accomplish established goals, agencies should, as appropriate: 1) engage in outreach and targeted recruitment; 2) take advantage of excepted appointing authorities;¹⁰ 3) create training and development plans for individuals with disabilities; and 4) take disability into account in selection decisions where an individual with a disability is otherwise qualified with or without a reasonable accommodation. To achieve maximum impact through their Rehabilitation Act program, agencies are required, under this Directive, to give special attention to those with targeted disabilities in each of the activities discussed herein.

PART C

EEOC OVERSIGHT AND TECHNICAL ASSISTANCE

FOR MANAGEMENT DIRECTIVE 715

(PARTS A & B)

I. REPORTING

This Directive requires each agency to report annually on the status of activities undertaken pursuant to its equal employment opportunity program under Title VII and activities undertaken pursuant to its affirmative action obligations under the

Rehabilitation Act. Agency reports must also include a plan that sets forth steps it will take in the future to correct deficiencies or further improve efforts undertaken pursuant to this Directive. Additional instructions regarding the format and content requirements of reports will be issued separately and may be modified on a periodic basis as needed. Agency reports must be submitted to the EEOC annually and should include (but not necessarily be limited to) the following:

- The name and location of the agency or reporting component;
- The number of permanent and temporary employees employed;
- The name of the head of the agency or reporting component;
- The name, title, grade and qualifications of the principal EEO official(s) responsible for overseeing the program and preparing the report;
- Copies of relevant EEO policy statements issued or reinforced during the previous fiscal year;
- A narrative description of the agency's mission, mission-related functions, and a copy of the agency's organizational chart;
- A description of how the agency's Title VII and Rehabilitation Act programs measure up against the essential elements of a model program described in this Directive;
- A description of activities undertaken during the preceding year in connection with the self-assessment and barrier identification and elimination under Parts A and B of this Directive;
- A description of action items and plans to be implemented or accomplished by the agency during the upcoming year in connection with carrying out its responsibilities under this Directive;
- A description of action items and plans to provide maximum opportunity for employees to advance to their highest level of potential under Parts A and B of this Directive;
- Data required in connection with Form 462 reporting; and
- Other information, in such format as EEOC may prescribe, required in the instructions supplementing this Directive.

Reports filed by agencies pursuant this Directive will be evaluated for clarity and content by EEOC. EEOC will approve or disapprove specific plans as appropriate. In addition, EEOC will periodically conduct evaluations and program reviews to more closely assess whether the program elements of this Directive are being met and will be available on an ongoing basis as issues arise for agencies to consult with in facilitating program improvements.

There are many consequences associated with an agency's failure to fully implement effective EEO programs, including the out-of pocket costs that will be borne by the agency in connection with workplace disputes, especially after the passage of the No Fear Act, and the very real costs associated with decreased morale and productivity resulting from the ineffective and inefficient use of human capital resources. Moreover, where annual reports or information otherwise obtained by EEOC suggest that an agency is giving insufficient attention to its obligations under this Directive, EEOC will inform the President and appropriate Congressional committees.

II. TRAINING AND TECHNICAL ASSISTANCE

The EEOC is available to provide training and technical assistance to facilitate agency compliance with this Directive. Information may be obtained by contacting EEOC as follows:

- (800) 669 - EEOC (the telephone information hotline)
- (202) 663-4599 (the Office of Federal Operations)
- www.eeoc.gov (EEOC's website)

Agencies may also contact the EEOC by regular mail addressed to:

Director, Federal Sector Programs
Office of Federal Operations
Equal Employment Opportunity Commission
1801 L Street NW
Washington, D.C. 20507

III. PROGRAM EVALUATIONS BY EEOC

EEOC may conduct evaluations of federal agency EEO programs to ensure compliance with this Directive, other policy guidance issued by EEOC and the statutes and regulations that EEOC enforces.

APPENDIX A

DEFINITIONS

The following definitions apply to this Directive:

- **Applicant:** A person who applies for employment.
- **Applicant Flow Data:** Information reflecting characteristics of the pool of individuals applying for an employment opportunity.
- **Barrier:** An agency policy, principle, practice or condition that limits or tends to limit employment opportunities for members of a particular gender, race or ethnic background or for an individual (or individuals) based on disability status.
- **Disability:** For the purpose of statistics, recruitment, and targeted goals, the number of employees in the workforce who have indicated having a disability on a Office of Personnel Management Standard Form (SF) 256. For all other purposes, the definition contained in 29 C.F.R. § 1630.2 applies.
- **Civilian Labor Force (CLF):** Persons 16 years of age and over, except those in the armed forces, who are employed or are unemployed and seeking work.
- **Employees:** Members of the agency's permanent or temporary work force, whether full or part-time and whether in competitive or excepted service positions.
- **Employment Decision:** Any decision affecting the terms and conditions of an individual's employment, including but not limited to hiring, promotion, demotion, disciplinary action and termination.
- **Feeder Group or Pool:** Occupational group(s) from which selections to a particular job are typically made.
- **Fiscal Year:** The period from October 1 of one year to September 30 of the following year.
- **Goal:** Under the Rehabilitation Act, an identifiable objective set by an agency to address or eliminate barriers to equal employment opportunity or to address the lingering effects of past discrimination.
- **Major Occupations:** Agency occupations that are mission related and heavily populated, relative to other occupations within the agency.
- **Onsite Program Review:** Visit by EEOC representatives to an agency to evaluate the agency's compliance with the terms of this Directive and/or to provide technical assistance.
- **Reasonable Accommodation:** Generally, any modification or adjustment to the work environment, or to the manner or circumstances under which work is customarily performed, that enables an individual with a disability to perform the essential functions of a position or enjoy equal benefits and privileges of employment as are enjoyed by similarly situated individuals without a disability. For a more complete definition, see 29 C.F.R. § 1630.2(o). See also, EEOC's

Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, No. 915.002 (October 17, 2002).

- **Relevant Labor Force:** The source from which an agency draws or recruits applicants for employment or an internal selection such as a promotion.
- **Section 501 Program:** The affirmative program plan that each agency is required to maintain under Section 501 of the Rehabilitation Act to provide individuals with disabilities adequate hiring, placement, and advancement opportunities.
- **Section 717 Program:** The affirmative program of equal employment opportunity that each agency is required to maintain for all employees and applicants for employment under Section 717 of Title VII.
- **Selection Procedure:** Any employment policy or practice that is used as a basis for an employment decision.
- **Special Recruitment Program:** A program designed to monitor recruitment of, and track applications from, persons with targeted disabilities.
- **Targeted Disabilities:** Disabilities that the federal government, as a matter of policy, has identified for special emphasis in affirmative action programs. They are: 1) deafness; 2) blindness; 3) missing extremities; 4) partial paralysis; 5) complete paralysis; 6) convulsive disorders; 7) mental retardation; 8) mental illness; and 9) distortion of limb and/or spine.
- **Technical Assistance:** Training, assistance or guidance provided by the EEOC in writing, over the telephone or in person.

APPENDIX B

AUTHORITIES RELEVANT TO FEDERAL EEO RESPONSIBILITIES

A. AUTHORITIES RELEVANT TO TITLE VII

STATUTES

Section 717 of Title VII of 1964, as amended, 42 U.S.C. § 2000e-16, requires that personnel actions be free from discrimination on the basis of race, sex, color, national origin and religion and that agencies establish affirmative programs of equal employment opportunity.

Section 715 of Title VII establishes the EEOC as the lead agency for "developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and

inconsistency among ...various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies...."

Section 703(k) of Title VII sets forth the criteria for establishing a claim of unlawful adverse impact.

REGULATIONS

29 C.F.R. §1604 Sets forth policies and principles governing discrimination on the basis of sex.

29 C.F.R. §1606 Sets forth policies and principles governing discrimination on the basis of national origin.

29 C.F.R. §1607 Establishes policies, principles and procedures for determining when a "selection procedure" has an unlawful impact on the hiring, promotion, or other employment opportunities of members of any race, sex, or ethnic group.

29 C.F.R. §1608.4 Governs affirmative action in the private sector and requires that an affirmative action plan or program under Title VII contain three elements: a reasonable self analysis; a reasonable basis for concluding action is appropriate; and reasonable action.

29 C.F.R. Part 1614 Sets forth policies and regulations to effectuate the Government's obligation to promote equal employment opportunity and to prohibit discrimination in employment because of race, color, religion, sex, national origin, age or disability.

29 C.F.R. §1614.601 Requires each agency to establish a system to collect and maintain accurate employment information on the race, national origin, sex and disability of its employees. 1614.601(b) states that data on race, national origin and sex should be collected by voluntary self identification. Subsection (e) states that an agency shall not establish a quota for the employment of persons based on race, color, religion, sex, or national origin. Subsection (g) states that an agency shall report to the Commission on employment by race, national origin, sex and disability in the form, and at such times, as the Commission may require.

29 C.F.R. §1614.602 Requires that each agency report to the Commission complaint processing information. Subsection (c) states that each agency shall submit annually for the review and approval of the Commission written national and regional equal employment opportunity plans of action. The plans shall be in a format prescribed by the Commission.

29 C.F.R. §1690 Sets forth procedures for the prescribed coordination between the EEOC and other federal agencies having responsibility for enforcement of statutes, regulations, Executive Orders and policies which require equal employment opportunity without regard to race, color, national origin, sex, religion, age or disability.

EXECUTIVE ORDERS

Executive Order 11478, as amended (1971)- Reiterated the policy of the federal government to provide equal employment opportunity on the basis of merit and fitness and "without discrimination because of race, color, religion, sex, or national origin. To promote the full realization of this policy, the Order requires, inter alia, that agencies and departments establish "continuing affirmative programs" to ensure that equal employment opportunity is an "integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees in the Federal Government."

Executive Order 12106 (1978) - Amended Executive Order 11478 to include, in its coverage, non-discrimination based on age and disability. The Order further transferred federal equal employment opportunity enforcement authority to the Equal Employment Opportunity Commission and made the EEOC responsible for "directing and furthering" the implementation of equal employment opportunity policy.

Executive Order 12067 (1978) - Effected the transfer of the functions of the Equal Employment Opportunity Coordinating Council to the EEOC and delineated the EEOC's responsibility for "develop[ing] uniform standards, guidelines, and

policies for promoting and furthering equal employment opportunity in the government.

B. AUTHORITIES RELEVANT TO REHABILITATION ACT

STATUTES

Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791, requires each covered agency to establish an affirmative action program plan for the hiring, placement, and advancement of individuals with disabilities. Section 501(g) of the Act incorporates the legal standards of title I of the Americans with Disabilities Act (42 U.S.C. § 12111 et seq) for complaints alleging "nonaffirmative action employment discrimination" and the provisions of sections 501 through 504, and 510, of the ADA (42 U.S.C. §§ 12201-12204 and 12210) "as such sections relate to employment."

Section 508 of the Rehabilitation Act requires agencies to provide federal employees with disabilities access to information and data that is comparable to the access provided to federal employees without disabilities.^{[11](#)}

The Architectural Barriers Act, 42 U.S.C. § 4151 et seq is enforced by the Architectural and Transportation Barriers Compliance Board and requires that buildings and facilities be accessible to people with disabilities if they were constructed or altered by or on behalf of the federal government or with certain federal funds, or leased to the government, after 1968.

REGULATIONS

29 C.F.R. Part 1614 Sets forth policies and regulations to effectuate the Government's obligation to promote equal employment opportunity and to prohibit discrimination in employment because of race, color, religion, sex, national origin, age or disability.

29 C.F.R. Part 1630 Regulations implementing the equal employment provisions of the Americans with Disabilities Act.

5 C.F.R. § 213.3102(t),(u) OPM special appointing authority governing employment of individuals who are mentally retarded (t) and those with severe physical "handicaps"(u).

5 C.F.R. § 213.3102 OPM special appointing authority governing persons with psychiatric disabilities. Under this provision such employees may be converted to competitive status after completion of two years of satisfactory service in their excepted positions.

5 C.F.R § 213.3202(11) OPM special appointing authority for employment of readers, interpreters, and personal assistants for employees with disabilities.

5 C.F.R. § 315.709 Authorizes employees with severe physical disabilities and mental retardation to convert to competitive status after completion of two years of satisfactory service in their excepted positions.

EXECUTIVE ORDERS

Executive Order 13078, as amended (2000) – Established the National Task Force on Employment of Adults with Disabilities (now called the Presidential Task Force). The purpose of the Task Force is to implement a national policy to effect gainful employment of adults with disabilities, including employment in the Federal Government.

Executive Order 13145 (2000) – Prohibits discrimination in federal employment on the basis of genetic information.

Executive Order 13163 (2000)– Promotes a policy to increase opportunities for individuals with disabilities employed at all levels and occupations in the federal government.

Executive Order 13164 (2000) – Requires agencies to establish written procedures to facilitate the provision of reasonable accommodations under the Rehabilitation Act.

¹ It should be noted that federal employees and applicants for employment are also protected from discrimination by the Age Discrimination in Employment Act of 1967 (ADEA) and the Equal Pay Act of 1963.

² In the past, EEOC has only required consideration of temporary employees in connection with agencies' Rehabilitation Act programs. However, as the nature of federal employment changes and more employees occupy temporary positions, an examination of Title VII data relating to temporary employees, where they comprise a significant portion of an agency's workforce, may assist an agency in identifying any meaningful disparities resulting from barriers to equality of opportunity. It is recognized that temporary employees will not experience the same career progression as the permanent workforce, and certain data, such as promotion rates, may not be relevant to temporary employees. EEOC will issue more detailed guidance to agencies concerning Title VII program treatment of temporary employees.

³See 42 U.S.C. § 12112(b).

⁴It is permissible for a test to measure sensory, manual or speaking skills where such skills are necessary for the performance of an essential function of the job for which the test has been designed.

⁵See 29 C.F.R. § 1614.601 for further guidance. In addition, EEOC will issue more detailed guidance on collecting and maintaining applicant flow data.

⁶Agencies should separately identify applicants and employees with targeted disabilities. Targeted disabilities are those that the federal government, as a matter of policy, has identified for special emphasis. Targeted disabilities (and the codes that represent them on Standard Form 256) are: 1. deafness (16 and 17); 2. blindness (23 and 25); 3. missing extremities (28 and 32 through 38); 4. partial paralysis (64 through 68); 5. complete paralysis (71 through 78); 6. convulsive disorders (82); 7. mental retardation (90); 8. mental illness (91); and 9. distortion of limb and/or spine (92).

⁷See 29 C.F.R. pt. 1630 app. §§ 1630.13, 14. In most cases, the Rehabilitation Act bars disability-related questions until after an agency has made a conditional

job offer to an applicant and requires that any inquiries of employees be job-related and consistent with business necessity. The Commission has recognized, however, that employers may extend invitations to self-identify for purposes of their affirmative action programs. See EEOC ADA Enforcement Guidance: Preemployment Disability-Related Question and Medical Examinations (10/95) at p. 12.

⁸See Executive Order 13164 (July 26, 2000). See also EEOC Policy Guidance on Executive Order 13164 (October 20, 2000).

⁹The Rehabilitation Act requires each Federal agency to submit to the EEOC for review and approval "an affirmative action program plan for the hiring, placement, and advancement of individuals with disabilities." The statute makes clear that EEOC is to approve these plans only after it "determines...that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with disabilities." 29 U.S.C. § 791(b).

¹⁰There are excepted appointing authorities that apply only to those with targeted disabilities. See 5 C.F.R. §§ 213.3102(t), (u); 213.3202(k) (1996). Agencies should follow the requirements of those authorities, which are enforced by the Office of Personnel Management, in assessing whether a particular individual with a disability is eligible for an excepted appointment.

¹¹National security systems, as defined in the Clinger-Cohen Act, 40 U.S.C. § 1452 are exempt from these requirements. See 29 U.S.C. § 794d(a)(5).

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